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No. 667

In the Supreme Court of the United States

October Term, 1959

UNITED STATES, PETITIONER

v.

CURTIS M. THOMAS, REGISTRAR OF VOTERS OF WASHINGTON PARISH, LOUISIANA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The decree (Pet. 1a) and the findings of fact and conclusions of law (Pet. 4a) entered by the United States District Court for the Eastern District of Louisiana on January 11, 1960, are not reported. The District Court's opinion of October 7, 1959, denying motions to dismiss the complaint (Pet. 11a), is reported at 177 F. Supp. 355.

[1] The complaint filed by the United States named a total of six defendants. Only one defendant, Thomas, has thus far appealed and, precisely speaking, he is the only respondent before the Court at this time.

JURISDICTION

The decree of the District Court granting a preliminary injunction was entered on January 11, 1960. (Pet. 4a). Notice of appeal to the Court of Appeals for the Fifth Circuit was filed by respondent Thomas on January 15, 1960, and the record on appeal was docketed in that court on January 27, 1960 (Pet. 2). On January 21, 1960, the Court of Appeals granted a stay, pending appeal, of the injunction issued by the District Court. On January 22, 1960, the United States applied to this Court to vacate the stay order of the Court of Appeals. On January 26, 1960, this Court entered an order stating that it would entertain a petition for certiorari to review the judgment of the District Court if filed by the Solicitor General on or before January 29, 1960. On the latter date, the petition for certiorari was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 2101(e).

STATUTES INVOLVED

42 U.S.C. 1971 (R.S. 2004, as amended by the Civil Rights Act of 1957, 71 Stat. 637) provides in pertinent part that:

> (a) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of

any State or Territory, or by or under its authority, to the contrary notwithstanding.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

* * * * *

Title 18, Louisiana Revised Statutes, 1950, provides:

§ 245. Illegal registration or loss of right to vote: notice to registrant; cancellation of name on failure to prove right

Upon a written affidavit signed and sworn to in duplicate before and filed with the registrar or his deputy by any two bona fide registered voters of the parish, to the effect that after reasonable investigation and on information and belief certain persons are illegally registered, or have lost their right to vote in the precinct, ward, or parish in which they are registered by reason of removal or otherwise, the registrar shall immediately, or, in any event, within forty-eight hours, notify the registrants by mailing to them postage prepaid, under P.O. Form 3547—Requested, at the addresses given in the registration records, the duplicate copy of affidavit, together with a printed citation requiring them to appear in person before the registrar or his deputy within ten days from the date of the mailing of the duplicate affidavit and citation, which date shall be stated in the citation, and prove their right to remain on the registration rolls by written affidavit of three bona fide registered voters in the form as provided in R.S. 18:132. The registrar shall immediately make a similar publication, as provided for in R.S. 18:132, and if the challenged registrants fail, within the same delays provided in that Section, to prove their right to remain on the rolls, as in that Section provided, the registrar shall cancel their names from the registration records as provided by R.S. 18:135.

QUESTIONS PRESENTED[2]

1. Whether the Civil Rights Act of 1957 (42 U.S.C. 1971 (a), (c)), as here applied, is constitutional.

[2] The United States was the successful party in the District Court, and of course did not appeal. Respondent Thomas, the

2. Whether, in the circumstances found by the District Court, the relief provided in the decree was authorized and appropriate.

STATEMENT

On June 29, 1959, the Attorney General, acting on behalf of the United States and under the authority granted by the Civil Rights Act of 1957 (42 U.S.C. 1971(c)), filed an action in the United States District Court for the Eastern District of Louisiana. The defendants named in the complaint were the Citizens Council of Washington Parish, Louisiana (the "Citizens Council"); four members of the Citizens Council (the "individual defendants"); and Curtis M. Thomas, Registrar of Voters of Washington Parish, Louisiana (the "Registrar"). The complaint alleged that certain specified discriminatory acts of these defendants had resulted in the removal from the registration rolls of Washington Parish, Louisiana, of large numbers of Negro citizens who had previously been registered and entitled to vote.

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only defendant who has thus far noted an appeal, has not filed a statement of points on which he intends to rely on the appeal (see Rule 75(d), Federal Rules of Civil Procedure). Accordingly, the questions stated in the petition for certiorari filed by the United States are those which, in our view, the record presents for consideration on appellate review. Since respondent, the moving party on the appeal, might have formulated the questions presented differently had the petition for certiorari been filed by him, we suggest that, in view of the unusual circumstances, the Court may properly give a liberal interpretation here to the rule limiting review to "Only the questions set forth in the petition or fairly comprised therein * * *." (Rule 23(c) of the Rules of this Court.)

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The findings and conclusions of the District Court (Pet. 4a–11a) may be summarized as follows:

Under R.S. 18:245 (1950) of the Louisiana Statutes (*supra*, pp. 3–4) any two registered voters of the parish may file affidavits of challenge with a Registrar of Voters stating their belief that certain persons are illegally registered or have lost their right to vote. The Registrar is required to notify the registrant thus challenged, who must then prove by affidavit of three registered voters his right to remain on the registration rolls. If the challenged registrant fails to prove his right to remain on the rolls, his name is cancelled on the rolls.

The individual defendants, who are registered voters of Washington Parish, availed themselves of these provisions of the state statutes. Following the usual procedure, they examined the Washington Parish registration records at the office of the Registrar with a view toward challenging the voting registration status of registrants. They confined their examination of registration records almost exclusively to the records of Negro voters, making only a token examination of the records of white voters and making no examination whatever of records in those wards where only white voters were registered. Under Louisiana law the color of the registrant is disclosed on the registration card.[3] The individual defendants then issued challenges against the Negro registrants, basing the challenges on deficiencies such as misspellings, failure

[3] La. R.S. 18:32 (1950.) See *infra*, p. 38, n. 30.

to compute age with exact precision, and illegible handwriting. (Pet. 6a–7a.) [4]

These acts and practices of the individual defendants, all of whom were members of the Citizens Council, were approved and endorsed by the Council, an organization whose avowed purpose is to maintain racial segregation. Although the individual defendants challenged only 10 white registrants, analysis of a random sampling reveals that over 60% [5] of the registration cards, all but two of which were of white registrants, contained deficiencies of the same type as those for which the Negroes were challenged. Some of the Negroes thus challenged responded with counter-affidavits in the form prescribed by statute.[6] These forms were subsequently held to be improper as not being responsive to the grounds which formed the bases of the challenges.[7]

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[4] Examples of registration cards and affidavits of challenge, which are included in the record, are reprinted at pp. 42a–42b of Appendix A, *infra*.

[5] Following an order of the District Court, 200 registration cards of current registrants were selected at random from those on file in the Registrar's office and photographed. All but two of these cards related to white registrants. The photographs of the 200 cards are part of the record on file with this Court. An analysis showing that more than 60% of the white persons' registration cards had deficiencies like those for which the Negroes were challenged appears in Appendix A, *infra*, pp. 43–44.

The Registrar, who testified that he was familiar with the great bulk of the registration cards and used them every day and that he had been Registrar since September 1949, stated that about half of all cards contained errors and omissions like those for which the Negroes were challenged.

[6] La. R.S. 18:132 (1950).

[7] See note 8, p. 9, *infra*.

The challenging action of the individual defendants resulted in the removal by the Registrar of the names of approximately 1,377 Negroes. But for the acts and practices of the individual defendants in filing the affidavits of challenge and the action of the defendant Registrar in giving effect to such challenges, these 1,377 Negroes would be presently registered to vote; and unless restored to the registration rolls of the Parish, these Negroes will be unable to vote in the State general election to be held April 19, 1960. (Pet. 8a.)

The acts and practices of the individual defendants, as described above, were expressly found by the District Court to have been committed and engaged in for the purpose and with the effect of depriving Negroes, solely because of their race or color, of the right to register and vote. As to the responsibility of the Registrar, the District Court found:

> Based upon his knowledge that (*a*) the Individual Defendants virtually confined their examination of the registration records to those of Negro voters, (*b*) the challenges were directed almost entirely to Negroes and not white persons, and (*c*) the Individual Defendants filed Affidavits of Challenge involving defects and deficiencies which he knew also appeared in the records of white persons, against whom Affidavits of Challenge were not filed, the Defendant Registrar was well aware of the racially discriminatory character of the challenges of the Individual Defendants. [Pet. 7a–8a.]

On November 30, 1958, there were 11,444 white persons and 1,517 Negroes registered to vote in Washington Parish. The challenging action of the individual defendants occurred principally between February 1959 and June 1959. By June 30, 1959, the number of white registrants was 12,228 and the number of

In the month after the individual defendants began making the challenges involved in this case, the Registrar brought a suit in a Louisiana state court against two of the individual defendants herein. The suit was for a declaratory judgment and injunctive relief. The Registrar contended that the voters were being challenged for minor errors which did not constitute a legal basis for removal from the rolls and raised the question whether the counter-affidavits used by those challenged were correct. He charged that the defendants' actions created a nuisance and interfered with the normal operation of his office. He also asked for a declaratory judgment including whether the actions required of him under Louisiana law conflicted with his obligations under an outstanding federal court injunction. (See *Dean* v. *Thomas*, 93 F. Supp. 129 (E.D. La.).) The court held that the grounds of challenge were proper and that the form of counter-affidavit provided by state law, relating as it did to the issue of residence only, was not responsive to the completely different issues (misspellings, etc.) involved in the challenges. Under the circumstances, the local court held that the only recourse of those challenged was to re-register, and ordered the Registrar to remove those challenged from the rolls.

The court held, further, that the evidence had not shown that color had anything to do with the challenges and that hence the Registrar would not be violating the federal court injunction. The court did refer to the possibility that the individual defendants might have made the challenges for racially discriminatory purposes but concluded that, since the Registrar's duties were merely ministerial, he was obliged to honor the challenges regardless of the possible motives of the challengers. *Thomas* v. *McElveen*, Civil Docket No. 18,751, 22 Judicial District Court, Parish of Washington, Louisiana, April 6, 1959 (not reported). The opinion is set forth in the Record at pp. 65-74.

Negro registrants was 236. The decline in the number of Negro registrants was a direct result of the challenges which had been filed by the individual defendants. (Pet. 6a–7a.)

The District Court concluded that the individual defendants, in challenging the registration status of voters, were acting under color of the laws of Louisiana; that they participated in the state electoral function under express authority of Louisiana law, using state facilities made available to them; and that their actions formed the basis of the removal of citizens from the registration rolls by the defendant Registrar acting in his official capacity. (Pet. 8a–9a.) The court also concluded:

That the challenges by the individual defendants, endorsed and supported by the Citizens Council, although not patently discriminatory on their face, were actually "massively discriminatory in purpose and effect, and as such unconstitutional." (Pet. 9a.)

That the action of the Registrar giving effect to the mass challenges of the individual defendants achieved a discriminatory result in violation of his duties under the Fifteenth Amendment. Whether or not he had the racially discriminatory purpose which motivated the action of the individual defendants and the Citizens Council is irrelevant as a matter of law. The challenges, having been made in violation of the Fifteenth Amendment and 42 U.S.C. 1971(a), were null, void and ineffective for any purpose, and the voters taken off the registration rolls as a result thereof were illegally removed. (Pet. 9a.)

The court's decree enjoined the individual defendants and the Citizens Council from making (or causing to be made) racially discriminatory challenges. It enjoined the Registrar from giving legal effect to the challenges against the Negro registrants; from permitting their names to remain off the Washington Parish registration rolls; and from giving effect, in the future, to racially discriminatory challenges. (Pet. 1a–4a.)

SUMMARY OF ARGUMENT

As applied to state action, 42 U.S.C. 1971 (a) and (c) are constitutional for the reasons advanced by the Government in *United States* v. *Raines*, No. 64, this Term. Both cases involve voting discrimination by state officials—in *Raines* by officials acting against qualified Negro applicants to register; in this case by an official acting against Negro voters who had already been registered. In this case, private individuals, availing themselves of state challenging provisions, singled out Negro citizens for discriminatory treatment and the Registrar who acted upon the challenges consummated and gave effect to the discrimination. In its entirety this conduct constituted state action.

State action is also to be found in the acts of the individual defendants, who availed themselves of state statutory provisions which exist for the purpose of revising and correcting the state's registration rolls. The individual defendants used state facilities, equipment, and records, all for the purpose of causing ac-

tion to be taken by a state official against the persons whose registrations were being challenged.

That Negroes were singled out for challenging is not disputed. The evidence amply supported the District Court's findings of fact that the Negroes' massive removal from the registration rolls through the action of the individual defendants and the Registrar was accomplished for reasons of race or color.

Restoration to the voting rolls of Negroes discriminatorily removed therefrom was precisely the type of relief in cases of this sort for which Congress enacted the Civil Rights Act of 1957. Such relief is fully within the equity powers of the federal courts, which have sanctioned and employed restoration to the registration rolls where Negro voters have been removed therefrom in large numbers.

ARGUMENT

I

42 U.S.C. 1971 (a) AND (c) ARE CONSTITUTIONAL

It was urged below in support of the motions to dismiss that 42 U.S.C. 1971 (a) and (c) are unconstitutional and reliance was had upon the decision in *United States* v. *Raines, et al.*, 172 F. Supp. 552 (M.D. Ga.). An appeal from that decision is pending in this Court (No. 64, this Term), and was argued at the January 1960 session. In the instant case the District Court refused to follow the *Raines* decision and held that 42 U.S.C. 1971 (a) and (c) are constitutional. *United States* v. *McElveen*, 177 F. Supp. 355 (E.D. La.). (Pet. 11a-19a.)

Our arguments in support of the constitutionality of 42 U.S.C. 1971 (a) and (c) as applied to state action were fully presented in the *Raines* case, and we do not repeat them here.[9]

It is our position that the issue with respect to the constitutionality of the Civil Rights Act of 1957 is the same here as in *Raines, viz.*, whether 42 U.S.C. 1971 (a) and (c) are constitutional as applied to persons, acting under the authority of the state, charged with depriving citizens of voting rights on account of race or color. However, the following factual (but, in our view, legally immaterial) distinctions between the two cases exist: (1) The defendants in *Raines* were all state officers; here, only the respondent Thomas (the Registrar) is a state officer; the other defendants are a private organization (the Citizens Council), and individuals (members of the Council) who, though not state officers, used procedures authorized by state law and thereby induced action by the state officer; and (2) *Raines* involved discrimination in the registration process, the Negro citizens there not being allowed to register because of their race; here, the Negroes were registered voters, many perhaps for several years, but they were removed from the rolls because of their race. This latter fact obviously calls for no difference in result from *Raines;* deprivation of voting rights because of race or color is equally unconstitutional, and the statute's application is equally valid, whether new or old voters are involved. As to the first factual

[9] Copies of our briefs in *Raines* are being served on counsel for the respondent and the individual defendants, who are also being served with this brief.

distinction noted above, the Registrar Thomas is at present the only defendant who has appealed; the individual defendants and the Citizens Council have, thus far at least, not filed notices of appeal, and if they fail to do so by March 11, 1960 (sixty days from entry of judgment), the decree will become final as to them, and no issue as to them would arise on this appeal. Clearly, the legal arguments made in *Raines* are fully applicable to Thomas, a state official exercising authority of the state under color of law, without need of further elaboration. However, in view of the presence in the case of the other defendants who may still appeal, we are presenting a full argument as to the validity of the statute as applied to the actions of all the defendants, including Thomas, as found by the District Court.

II

THE REMOVAL OF THE NEGRO CITIZENS FROM THE ROLLS CONSTITUTED STATE ACTION

The Fifteenth Amendment and 42 U.S.C. 1971(a) protect the federal right of citizens to vote, without distinction of race or color, from denial or abridgment by the states or by the United States. A violation of these provisions occurs even though the statute under which the deprivation occurs is not discriminatory on its face (cf. *Neal* v. *Delaware*, 103 U.S. 370; *Yick Wo* v. *Hopkins*, 118 U.S. 356), and even though ostensibly non-racial standards are being applied (*Guinn* v. *United States*, 238 U.S. 347; *Lane* v. *Wilson*, 307 U.S. 268; *Davis* v. *Schnell*, 81 F. Supp.

872 (S.D. Ala.), affirmed, 336 U.S. 933). See *Lane v. Wilson*, *supra*, at p. 275:

> The [Fifteenth] Amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race.

And in *Yick Wo v. Hopkins*, 118 U.S. 356, 373, 374, the Court stated:

> Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. * * *

Those principles are fully applicable to this case.

A. THE REGISTRAR WAS ACTING ON BEHALF OF THE STATE AND WAS A PROPER PARTY DEFENDANT

1. Under the Fifteenth Amendment—

> The vital requirement is State responsibility—that somewhere, somehow, to some extent, there be an infusion of conduct by officials, panoplied with State power, into any scheme by which colored citizens are denied voting rights merely because they are colored.[10]

It is not in dispute that the Registrar acted as an

[10] Opinion of Mr. Justice Frankfurter in *Terry v. Adams*, 345 U.S. 461, 473.

officer of the state in participating in, and giving effect to, the racially discriminatory challenges. Admittedly, he was an officer of the state at all times pertinent to this case. Beyond doubt, the actions of state registrars of voters are actions of the state. See *Thornton* v. *Martin*, 1 Race Rel. L. Rep. 213 (M.D. Ga.); *Davis* v. *Schnell*, 81 F. Supp. 872 (S.D. Ala.), affirmed, 336 U.S. 933; *Byrd* v. *Brice*, 104 F. Supp. 442 (W.D. La.), affirmed, 201 F. 2d 664 (C.A. 5); *Lane* v. *Wilson*, 307 U.S. 268.

It is wholly irrelevant to the issue of "state action" whether the Registrar personally shared the discriminatory purpose of the individual defendants; the "intent" or personal state of mind of the public officer or agency through whom racial discrimination is accomplished is of no legal significance. What matters is the fact of discrimination through state conduct. *Department of Conservation and Development* v. *Tate*, 231 F. 2d 615 (C.A. 4), certiorari denied, 352 U.S. 838; *Sweeney* v. *Louisville*, 102 F. Supp. 525 (W.D. Ky.), affirmed sub nom. *Muir* v. *Louisville Park Theatrical Association*, 202 F. 2d 275 (C.A. 6), reversed *per curiam*, 347 U.S. 971; cf. *Shelley* v. *Kraemer*, 334 U.S. 1 (state court enforcement of a racially restrictive covenant is state action prohibited by the Fourteenth Amendment although the court did not share the discriminatory purpose); *Cooper* v. *Aaron*, 358 U.S. 1, 15–16. Indeed, positive legal opposition by a state and a city to "private" racial discrimination enforced by public officers does not negate the presence of state action. *Pennsylvania* v. *Board of Directors of City Trusts*, 353 U.S. 230.

2. It was urged below that because the Registrar has no discretion under the Louisiana challenging laws,[11] he cannot be held responsible for the discrimination exercised by others nor can any discriminatory intent be imputed to him.

As we have just indicated, this argument is based on the erroneous assumption that the Registrar is being held responsible here in a personal sense. On the contrary, the proceeding involves him only in his official capacity as an agency of the state exercising governmental authority vested in him by the state. In any event, it is immaterial that the Registrar may be compelled under state law to give effect to challenges even if he knows them to be discriminatory.[12] This contention ignores the paramount *federal* duty of the Regis-

[11] La. R.S. 18:245 (1950) (set forth at pp. 3-4, *supra*), or its counterpart R.S. 18:133 (1950). See *Smith* v. *Flournoy*, 115 So. 2d 809 (La.).

[12] In *Thomas* v. *McElveen*, *supra*, p. 9, n. 8, the Louisiana local court assumed that, even if the two individual defendants there had made racially discriminatory challenges, the Registrar was nevertheless obliged to give them effect. Since no evidence of the racially discriminatory purpose of the individual defendants was before the local Louisiana court, its comments as to the Registrar's obligations were *obiter* at best; but in no event would they be binding on the federal courts insofar as any determination of a federal constitutional question was concerned. See *Smith* v. *Allwright*, 321 U.S. 649, 662. Moreover, it appears that the bulk of the challenges involved in this case were not involved in the local proceeding but were made after the local court's judgment. The petition in that proceeding alleged that the individual defendants had filed 140 challenges. *Thomas* v. *McElveen*, Civil Docket No. 18,751, 22 Judicial District Court, Parish of Washington, Louisiana, April 6, 1959. The full text of the opinion is set forth in the Record at pp. 65-74.

trar as a state official—his duty under both the Fifteenth Amendment and under Art. VI, cls. 2 and 3 of the Constitution of the United States. As this Court stated in *Ex parte Virginia*, 100 U.S. 339, 348:

> We do not perceive how holding an office under a State, and claiming to act for the State, can relieve the holder from obligation to obey the Constitution of the United States, or take away the power of Congress to punish his disobedience.

If there is a conflict between federal and state duties imposed upon a state registrar of voters, the state duties are superseded. Cf. *Ex parte Siebold*, 100 U.S. 371, 386. A state may not require by law that its registrars violate their federal duty to refrain from racial discrimination. See *Guinn* v. *United States*, 238 U.S. 347. If it has no power to do so directly by statute, it obviously cannot do so indirectly by attempting to permit private citizens to file discriminatory challenges and then require the registrar to honor them automatically.[13]

It follows that the Registrar not only had the authority but the duty under the federal Constitution to refuse to take any action based upon the discriminatory challenges. The evidence showed and the District Court found (Pet. 7a–8a) that the Registrar

[13] Likewise, it could not be maintained that the Registrar could be subjected to state criminal penalties for violating his state duty by refusing to honor discriminatory challenges or by reinstating persons thus challenged to the registration rolls. His paramount federal duty would be a complete defense in any such criminal proceeding. *Ex parte LaPrade*, 289 U.S. 444; *In re Neagle*, 135 U.S. 1.

had reason to know that the challenges were racially discriminatory.

Finally, even if it be assumed, *arguendo*, that the Registrar acted only as an unwilling but necessary conduit through which the racial discrimination of the individual defendants was carried out, still he would be a proper party defendant in this suit. In cases such as *Shelley V. Kraemer*, 334 U.S. 1, there is no implication that the state courts which enforced racially restrictive covenants did so wilfully or even purposely. It is enough here that the Registrar was a participant and a necessary one, in a process, for which the state was responsible, which could be and was in fact used to achieve deprivations of voting rights because of race or color. See *Cooper* v. *Aaron*, 358 U.S. 1, 15–16.

The Registrar is more than a proper party defendant; he is of course an indispensable party. He alone, as Registrar of Voters in Washington Parish, is in a position to effectuate the District Court's decree by restoring to the registration rolls the persons who were illegally removed therefrom. It should be noted in this connection that 42 U.S.C. 1971(c) does not specify that the suits by the Attorney General must be solely against those persons who engage in the acts and practices proscribed by subsections (a) and (b). Because Section 1971(c) provides for preventive relief, it authorizes all equitable remedies and procedures which are consistent with the policy, purposes, and provisions of the Act. Accordingly, all persons who may be affected by the decree may, and

should, be made parties to the suit.[14] See *Commonwealth Trust Co.* v. *Smith*, 266 U.S. 152; *Niles-Bement-Pond Co.* v. *Iron Moulders Union*, 254 U.S. 77, 80; *Minnesota* v. *Northern Securities Co.*, 184 U.S. 199, 235; Pomeroy, *Equity Jurisprudence*, 152, 153, Section 114 (5th ed. 1941).[15] The Registrar, who would be most immediately affected by the decree, was therefore a proper and necessary party, if the preventive relief which Congress directed is to be made fully effective.

B. STATE ACTION PERMEATES THE ACTIONS OF ALL THE DEFENDANTS

By all judicially recognized standards, the requirement of "state action" is met with respect to all of

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[14] See Rule 20(a) of the Federal Rules of Civil Procedure, especially:

> All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

See *Shields* v. *Barrow*, 17 How. 130, 139.

[15] The principle involved here was well stated in *Palo Alto Banking & Investment Co.* v. *Mahar*, 65 Ia. 74, 21 N.W. 187, where the court, speaking of a county recorder of deeds, said (at pp. 189–190): "* * * An officer may be made a party to an action to restrain him in the performance of official duties, when the discharge of these duties will be the means of consummating or aiding fraudulent purposes, or of working oppression or injustice. While the officer is guilty of no wrong or unlawful purposes, his official act may result in wrong, and through it fraudulent conspiracies may be carried out. He will be restrained from acting * * *."

the other defendants as well. Indeed, to this point none of the parties defendant has contended the contrary, although motions to dismiss and answers were filed by all.

1. Elections are so intrinsically a public function that the state cannot divorce itself from any of their aspects. The revision or correction of voters' registration rolls is a familiar state function and an essential part of the election machinery in most states. The right of the state to purge registration lists has been characterized as "one of the high prerogatives of the state to provide for and insure honest elections." *Pierce* v. *Superior Court*, 1 Cal. 2d 759, 761; 37 P. 2d 460, 461.

Racial discrimination by private individuals administering any phase of the state's electoral process violates the Fifteenth Amendment and 42 U.S.C. 1971(a). This basic principle, controlling here, has now been firmly established by this Court. *Smith* v. *Allwright*, 321 U.S. 649, 664, held:

> This grant to the people of the opportunity for choice is not to be nullified by a State through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election. * * *

See also *Terry* v. *Adams*, 345 U.S. 461, and *Rice* v. *Elmore*, 165 F. 2d 387 (C.A. 4), certiorari denied, 333 U.S. 875, which involved racial discrimination in voting by private groups or individuals wholly without state statutory machinery.

[16] A collection of state registration purging cases may be found in 96 A.L.R. 1035.

The racial discrimination here, made possible by the statutory challenging procedures established by Louisiana and used by the individual defendants for racial ends, is well within the ambit of the Fifteenth Amendment and of 42 U.S.C. 1971(a).

2. The District Court found that the four individual defendants, with the approval and endorsement of the Citizens Council of which they are members, initiated the challenges involved pursuant to state statutory authorization. Using the physical facilities of the Registrar's office they scrutinized the registration cards and related voting materials, all of which were state property provided for by state statute and financed by public funds. Indeed, so preemptive of the Registrar's official time, place and paraphernalia were these defendants, that in his view they were making public nuisances of themselves, and he unsuccessfully attempted to enjoin them in state court litigation. *Thomas* v. *McElveen, supra,* p. 9, n. 8.

From time to time the individual defendants executed Affidavits of Challenge authorized by state statute and supplied by the state. These affidavits were sworn to before the Registrar, a state official, and notarized by him or his deputy. The affidavits triggered the issuance to the challenged Negroes of statutorily-authorized Citations of Notice to Erase, also provided by the state. At every step in the process there was an infusion of state power and state authorization.

Furthermore, it is of the greatest significance that the individual defendants, in carrying through this challenging process, were not forwarding any private

interests of their own, but solely the public interest of the State of Louisiana in the purity of its election rolls and its elections. By state statute the challengers were created "private attorneys general" to vindicate the interests of the state—not any private interest—in the proper enforcement of its electoral laws. If the challenging process here had been wholly carried on by the State's Attorney General, his conduct would undeniably have been state action in the fullest sense. It should make no difference that Louisiana has chosen to entrust this official function to an otherwise private individual, who becomes *pro tanto* an organ of the state. See also *infra*, pp. 24 *ff*.

In sum, statutory authorization, the official interest purportedly being vindicated by the challenging mechanism and process, the extensive employment of state property, state physical facilities, the use of state records, documents, forms and officers, the recognition and enforcement by the state of the result—all combine to make the state the effective medium of the discrimination.[17] *Kerr* v. *Enoch Pratt Free Library of Baltimore City*, 149 F. 2d 212 (C.A. 4), certiorari denied, 326

[17] "* * * Under some circumstances state contact, control and encouragement may be so intimately fused with the activities of a private group or individual in the performance of a public function that it seems fair to call the activity 'state action' * * *." Shanks, "*State Action*" *and the Girard Estate Case*, 105 U. of Pa. L. Rev. 213, 227 (1956). The author wrote of the applicability of the constitutional limitations of the Fourteenth Amendment to private conduct of a non-exclusive state function. He pointed out that where, as here, a private group is participating in an exclusive function of the state, *i.e.*, voting, it is all the more subject to constitutional limitations. *Ibid.*

U.S. 721. See also *Parker v. University of Delaware*, 31 Del. Ch. 381, 75 A. 2d 225.

3. As we have indicated, the principle is now established that private individuals administering any phase of the electoral processes must conform their conduct to the standards of the Fifteenth Amendment. Although this rule has special significance in election matters because of their uniquely public nature, it has been applied to other activities of private individuals—even some (unlike the case here) in which the activity is not traditionally a public function or carried on pursuant to statutory authorization.[15] Thus, a private party operating a municipality acts for the state and must conform to the standards of the Fourteenth Amendment, *Marsh v. Alabama*, 326 U.S. 501; a privately-owned public transportation system operating in the District of Columbia, and with its authorization, is bound by the due process clause of the Fifth Amendment, *Pollak v. Public Utilities Commission*, 191 F. 2d 450 (C.A.D.C.), reversed on other grounds, 343 U.S. 451; private lessees who operate publicly-owned facilities such as swimming pools or parks may not discriminate racially, *Lawrence v. Hancock*, 76 F. Supp. 1004 (S.D. W. Va.); *Department of Conservation and Development v. Tate*, 231 F. 2d 615 (C.A. 4), certiorari denied, 352 U.S. 838; a labor union granted the power

[15] "* * * Not only may the private group be denied a liberty to act as it sees fit in an area of state concern, but when the group so exercises its powers as to infect the blood-stream of official sovereignty its exercise of power may be treated as the assertion of state authority." Howe, *The Supreme Court, 1952 Term (Foreword; Political Theory and the Nature of Liberty)*, 67 Harv. L. Rev. 91, 95.

to bargain collectively by a federal statute may not use the power to discriminate racially. *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768; *Syres v. Oil Workers International Union*, 350 U.S. 892; cf. *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192.

In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225, the respondents contended, *inter alia*, that union shop agreements, specifically permitted by the Railway Labor Act, operated to deprive them of rights secured by the First and Fifth Amendments. In the course of its opinion holding that no rights were infringed upon, the Court said, at page 232:

> If private rights are being invaded, it is by force of an agreement made pursuant to federal law which expressly declares that state law is superseded. * * * In other words, the federal statute is the source of the power and authority by which any private rights are lost or sacrificed. * * * *The enactment of the federal statute authorizing union shop agreements is the governmental action on which the Constitution operates, though it takes a private agreement to invoke the federal sanction.* [Emphasis added.]

See also *Cooper v. Aaron*, 358 U.S. 1, 17, 19.

From these and comparable cases emerge two related doctrines: (1) If private individuals exercise functions of public significance which by tradition are exclusively or chiefly governmental functions, "state action" is involved regardless whether the activities are authorized by statute; and (2) if private individuals act under authority granted them by state law, "state action" is involved regardless whether the conduct is traditionally a function of the state.

Here, not only are private individuals participating in a traditional state function, but they are doing so pursuant to statutory authorization. Clearly, then, their activities are within the purview of the Fifteenth Amendment.

4. The individual defendants are also within the ambit of the Fifteenth Amendment by virtue of their inseparability from the Registrar in the whole discriminatory scheme. In many instances private persons have been held to be under the "panoply" (cf., Frankfurter, *J.*, in *Terry* v. *Adams*, 345 U.S. 461, 473) of state action or color of law when acting closely with state officials. See *Baldwin* v. *Morgan*, 251 F. 2d 780, 788 (C.A. 5); *Valle* v. *Stengel*, 176 F. 2d 697, 702 (C.A. 3); *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240, 249 (C.A. 3); *Brown* v. *United States*, 204 F. 2d 247 (C.A. 6). If a private citizen induced by a state officer to act with him is within the "state action" concept (see *Kochler* v. *United States*, 189 F. 2d 711 (C.A. 5)), surely the conduct of a private citizen who possesses actual state power to compel a state officer to act [19] becomes "state action" itself.

5. State enforcement of private discrimination is state action and may violate constitutional guaranties even where traditionally private legal relationships are involved. *Shelley* v. *Kraemer*, 334 U.S. 1; *Barrows* v. *Jackson*, 346 U.S. 249; *Pennsylvania* v. *Board of Directors of City Trusts*, 353 U.S. 230. The touchstones

[19] The Louisiana Supreme Court has held that registrars' duties in giving effect to challenges filed by private individuals are ministerial and mandatory. *Smith* v. *Flournoy*, 115 So. 2d 809 (Nov. 9, 1959).

of "state action" in these cases, and in *Terry* v. *Adams*, *supra*, are the elements of acquiescence, recognition and enforcement by the state of essentially private discrimination. As the Court said in *Communications Assn.* v. *Douds*, 339 U.S. 382, 401:

> * * * when authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself. * * *

Thus, by the state's recognition and enforcement of activity beginning as private racial discrimination, still another criterion of "state action" is met in this case. Indeed, as we have pointed out, this case is stronger because neither the Registrar nor the individual defendants were promoting any private interest in challenging the Negro voters. In cases such as *Shelley* v. *Kraemer*, the persons engaged in the discriminatory conduct were advancing private goals.[20]

III

THE DISTRICT COURT'S FINDINGS OF FACT ARE AMPLY SUPPORTED BY THE EVIDENCE[21]

The District Court's order setting a date for the

[20] State action is present even if Louisiana law prohibits such racial discrimination as was practiced here. *Raymond* v. *Chicago Union Traction Co.*, 207 U.S. 20; *Home Tel. and Tel. Co.* v. *Los Angeles*, 227 U.S. 278; *Iowa-Des Moines Bank* v. *Bennett*, 284 U.S. 239. See the Reply Brief for the United States in *United States* v. *Raines*, No. 64, this Term.

[21] While respondent has not indicated that he will attack the sufficiency of the evidence to support the findings, we are including this discussion in the brief by way of anticipatory rebuttal in the event that the point should be raised.

hearing for a preliminary injunction (R. 21), specified that the hearing would be confined to a record made up of affidavits, depositions, or other written documents. In addition to the pleadings, the documentary evidence adduced at the hearing consisted chiefly of affidavits by the defendants, the defendants' responses to requests for admissions, the deposition of the Registrar, photographs of certain registration records, state court opinions, and state registration statistics.

The evidence in this voluminous documentary material fully warranted the District Court's findings of fact. That evidence has been summarized in the Statement, *supra*, pp. 6–10.

The only significant fact in dispute at the hearing was whether the defendants engaged in racial discrimination. The court found that they had engaged in such discrimination, from the following evidence:

a. The individual defendants confined their examination of the registration records almost exclusively to the records of Negroes. R. 28, 90. They did not examine records in those wards in which no Negroes were registered. R. 28, 90. These facts were admitted. R. 28, 90.

b. The challenges were directed almost exclusively at Negro voters, with only a token number of white persons being challenged. R. 51, 28, 90. No white voters were challenged in the wards having no Negro registrants. R. 28, 90. These facts were admitted. R. 51, 28, 90.

c. The deficiencies which formed the basis of the challenges of Negroes existed also in the registration

cards of over 50% of all registered voters. R. 51, 28 40
This fact was admitted. R. 51, 28, 40

d. The Registrar was aware of this discriminatory pattern when he gave effect to the challenges. R. 48-51, 56, 57, 69, 73, 28, 40.
This fact was admitted. R. 48-51, 56, 57, 69, 72-73, 28, 40

e. One of the purposes of the Citizens Council is racial segregation. R. 96. This fact was admitted. R. 96.

This summary of the undisputed evidence is more than sufficient to support the findings of racial discrimination made by the District Court.

IV

RESTORATION TO THE ROLLS OF THE ILLEGALLY REMOVED NEGRO CITIZENS CONSTITUTED APPROPRIATE RELIEF

The respondent urged in the District Court and in his stay motion in the Court of Appeals that the order requiring him to restore to the registration rolls the Negro citizens who were illegally removed would require him to violate state law, thereby subjecting him to irreparable injury and would result in restoring unqualified persons to the registration rolls. Apparently, the argument is that requiring restoration to the registration rolls of persons not technically qualified to vote (*a*) was beyond the power of the court under the Civil Rights Act of 1957 and (*b*) was inappropriate in equity.

A. THE CIVIL RIGHTS ACT OF 1957 AUTHORIZES THE RELIEF GRANTED.

1. 42 U.S.C. 1971(*c*) authorizes the Attorney General to institute "a civil action or other proper proceeding for preventive relief, including an application

for a permanent or temporary injunction, restraining order, or other order." (*Supra*, p. 3.) Section 1971(d)[22] grants jurisdiction to the district courts of proceedings instituted pursuant to Section 1971.

The order of the District Court requiring the Registrar to restore to the registration rolls the names of the Negroes illegally removed is clearly an injunction as that term is used in Section 1971(c).[23] True, this order is mandatory in substance, since it requires restoration to the *status quo* prior to the filing of the invalid challenges. But this certainly does not alter the fact that it is an injunction within the meaning of the Act. In any event, the phrase "or other order" in Section 1971(c) authorizes affirmative equitable relief where such relief is appropriate. See, *e.g.*, *Porter* v. *Warner Co.*, 328 U.S. 395.

2. The broad, unqualified language of the Act and its legislative history compel the conclusion that, so

[22] (d) Jurisdiction; exhaustion of other remedies.

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

[23] This phase of the decree is couched in the language of an injunction:

3. Curtis M. Thomas, individually and as Registrar of Voters of Washington Parish, Louisiana, his deputies and agents, and the successors of each, are hereby enjoined as follows:

* * * * *

(*b*) From permitting the names of any of the approximately 1,377 persons challenged * * * to remain, off the present and current rolls of qualified voters of Washington Parish, Louisiana, or from a legal supplement thereto, longer than ten days * * *.

far as the right to vote was concerned, Congress authorized and directed the most comprehensive protection which judicial power and remedies could provide. Specifically, it clearly contemplated that the courts would order the effective restoration to the voting rolls of persons who have been illegally removed because of their race, and who—but for that fact—would be entitled to vote. And in this case the decree was based upon a flat finding that "But for [the defendants' actions], the approximately 1,377 Negroes previously registered to vote and removed from the registration rolls would be presently registered to vote." (Pet. 8a.) Where such a finding is made by a court, the 1957 Act gives it full power to enter such decrees and to take such other action as may be required to vindicate the constitutional rights involved. Congress did not intend the federal courts to enter empty or abstract formal declarations, but rather to effectively restore the right of franchise.

In connection with the meaning of some of the language now embodied in Section 1971(c), the following colloquy took place at a hearing before the House Judiciary Committee, between Representative Miller and then Attorney General Brownell: [24]

> Mr. MILLER. Mr. Attorney General, on page 6 of the same bill, section 121, paragraph 4, "Whenever any persons have engaged or are about to engage in any acts or practices," from your experience as Attorney General during the past 4 years could you give me a hypothetical

[24] Hearings before Subcommittee No. 5 of the House Committee on the Judiciary, 85th Cong., 1st Sess., p. 601.

example of what might be "about to engage in any act"?

Mr. BROWNELL. Yes. For example, if you have a registrar of voters who arbitrarily strikes off several thousand names of Negro voters shortly before the deadline for qualification of voters and gives no hearing to them or an inadequate hearing, then I would think that would be a case that would alert the Attorney General under this bill to the need for some injunctive action which would give those people their day in court *and allow them, like any other citizen, the right of franchise.*

Mr. MILLER. *To be placed back on the books for the purpose of the forthcoming election so they would not lose their franchise* in that election, which they would lose if they had to resort to a lengthy criminal proceeding.

Mr. BROWNELL. That is right. [Emphasis added.]

At the hearings held by the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, Mr. Brownell testified to the same effect in detailing the 1956 purge of Negro voters in Ouachita Parish, Louisiana. His statement, the significant portion of which is printed below, leaves no question that the prevention of the practice of purging Negro voters in Louisiana was one of the major purposes of the Act:[25]

* * * * *

Let me now give you some examples of situations which have come before us * * * in which

[25] Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 85th Cong., 1st Sess., pp. 3–5.

we think the proposed legislation would have been of great assistance in protecting the right to vote.

First, let me refer to the situation which developed last year in Ouachita Parish, La.

In March 1956 certain members and officers of the Citizens Council of Ouachita Parish commenced an examination of the register of the voters of Ouachita Parish.

Thereafter, they filed approximately 3,420 documents purporting to be affidavits but which were not sworn to before either the registrar or deputy registrar, as required by law.

* * * * *

In each purported affidavit it was alleged that the affiant had examined the records on file with the registrar, that the registrant named therein was believed to be illegally registered and that the purported affidavit was made for the purpose of challenging the registrant's right to remain on the roll of registered voters.

Such affidavits were filed challenging every one of the 2,389 Negro voters in ward 10. None of the 4,054 white voters in that ward were challenged.

* * * * *

With respect to another ward, ward 3, such affidavits were filed challenging 1,008 of the 1,323 Negro voters.

Only 23 of the white voters in ward 3 were challenged. The registrar accepted their affidavits even though she knew that each affiant had not examined the registration cards of each registered voter he was challenging.

On the basis of these affidavits, citations were mailed out in large groups requiring the challenged voters to appear within 10 days to prove their qualifications. Registrants of the Negro race responded to these citations in large numbers. During the months of April and May large lines of Negro registrants seeking to prove their qualifications formed before the registrar's office, starting as early as 5 a.m.

The registrar and her deputy refused to hear offers of proof of qualifications on behalf of any more than 50 challenged registrants per day. Consequently, most of the Negro registrants were turned away from the registrar's office and were denied any opportunity to establish their proper registration.

Thereafter, the registrar struck the names of such registrants from the rolls. With respect to those registrants who were lucky enough to gain admission to the registrar's office, the registrar imposed requirements in connection with meeting the challenge which were in violation of Louisiana law.

The registrar refused to accept as witnesses, on behalf of challenged voters, registered voters of the parish who resided in a precinct other than the challenged voter or who had themselves been challenged or had already acted as witnesses for any other challenged voter.

By these means the number of registered Negro voters in Ouachita Parish was reduced by October 6, 1956, from approximately 4,000 to 694.

* * * * *

The point I would like to make now is that, had the administration's program been in effect, the Department would have been able to

> initiate a civil action *for the purpose of restoring the Negro voters to the rolls of registered voters* in time to vote in the November election. [Emphasis added.]

Examples from the Senate debates also manifest the congressional intention to provide for mandatory relief under the Act. Thus, Senator Morse stated:[26]

> So much has been said of injunction that it has been all but overlooked that the proposed provisions would enable the issuance of mandatory decrees after full trial on the merits. Such orders are presently enforcible by contempt action for violations of the statutes.

To the same effect is the following exchange between Senators Carroll and O'Mahoney:[27]

> Mr. CARROLL. If a court has issued its mandate to the registrar and demands that the registrar register a qualified voter, do I understand that if there were noncompliance the court would have the right to put the registrar in jail until he complied with the court's order?
>
> Mr. O'MAHONEY. Absolutely.

There is printed in the Congressional Record (103 Cong. Rec. 13334–13336) a letter from then Assistant Attorney General Warren Olney III, reciting the facts that prompted the Department of Justice to present to a grand jury certain complaints concerning the purging of Negro voters in five Louisiana parishes. The text of this letter, which is reprinted in Appendix B, *infra*, shows that one of the major objectives of the Civil Rights Act of 1957 was to prevent the very type of practice which is the subject matter

[26] 103 Cong. Rec. 12460.

[27] 103 Cong. Rec. 12572.

of this suit. Other examples of consideration by Congress of the practice of challenging Negro voters may also be cited. See 103 Cong. Rec. 13873; Hearings Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 85th Cong., 1st Sess., pp. 3–5, 31, 66, 240–243; Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary, 85th Cong., 1st Sess., pp. 1219–1222.

3. Even in the absence of such compelling legislative history, it has frequently been held that statutory provisions similar to 42 U.S.C. 1971(c) authorize the federal courts of equity to grant affirmative, effective relief. See *e.g.*, *United States* v. *Moore*, 340 U.S. 616; cf. *Texas & N.O.R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U.S. 548; *Phelps Dodge Corp.* v. *N.L.R.B.*, 313 U.S. 177; *Walling* v. *O'Grady*, 146 F. 2d 422 (C.A. 2); *McComb* v. *Frank Scerbo & Sons, Inc.*, 177 F. 2d 137 (C.A. 2). As this Court stated in *Porter* v. *Warner Co.*, 328 U.S. 395, 398, in which it was held that the phrase "or other order" authorized the granting of affirmative relief: "Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." See also, to the same effect, *Mitchell* v. *Robert De Mario Jewelry, Inc.*, No. 39, this Term, decided January 18, 1960, slip op., pp. 3–4.

These considerations lead inescapably to the conclusion that the Civil Rights Act of 1957 authorizes the relief granted in this case, that is, restoration to the registration rolls of the names of qualified voters found to have been challenged and removed from the rolls, in violation of the Act, because of their race or

color. Where race or color is found to be the ground for "disqualification" of a voter, that finding erases the alleged disqualification—and the voter is fully entitled to exercise his rights of which he has been discriminatorily deprived. Accordingly, the proper relief is to order the appropriate election officials to restore him to the rolls, *i.e.*, to the status he held prior to the discriminatory "disqualification." To the extent that such a provision need find support in the exercise of judicial discretion in the particular circumstances of the case, such support exists here, as we shall now show.

B. THE ORDER OF RESTORATION TO THE ROLLS WAS WITHIN THE DISTRICT COURT'S DISCRETIONARY POWERS

The District Court found here that the challenges were directed against Negro voters and not against white voters similarly situated. The substantial injury suffered by the Negro voters thus challenged lies in the fact that they alone were compelled to prove their right to remain on the registration rolls. Since the challenges were based on deficiencies appearing on the registration cards, the Negroes who were challenged were required, as a practical matter, to register *de novo*.

Section 245 of Title 18 of the Louisiana Revised Statutes of 1950 provided the only means by which the challenged registrants here could prove their right to remain on the registration rolls.[28] Under that provi-

[28] The Constitution of Louisiana (Art. 8, Sec. 5) provides an alternative, judicial method for challenging registrants and affords those challenged trial by jury. The procedural safeguards embodied in this method provide a striking contrast to

sion, a challenged registrant must appear in person before the registrar within ten days from the date of the mailing of the citation and prove his right to remain on the rolls "by written affidavit of three bona fide registered voters in the form as provided in R.S. 18:132." Where the challenges are based on deficiencies on the registration cards, the affiants must swear, under penalty of perjury,[29] that no such deficiencies exist in the registration records. Where, as in this case, such deficiencies did in fact exist, the only feasible alternative by the challenged registrant is to register *de novo*.

Registration *de novo* in Louisiana entails passing all the stringent tests which are imposed as qualifications for voting.[30] To compel members of one race

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the provisions "of an extremely summary nature" (see *Reddix v. Lucky*, 252 F. 2d 930, 931, n. 1 (C.A. 5)) which were resorted to in this case and seem to be generally employed in Louisiana.

[29] "* * * [A] prima facie case of perjury on the part of either the challenger or the counter affiants may have been made out, and if apparent perjury is disclosed, the entire matter should be referred to the District Attorney and/or the Grand Jury (Reports and Opinions of the Attorney General, 1956–1958, p. 183.)." *Thomas v. McElveen*, *supra*, p. 9, n. 8. See also, La. R.S. 18:222.

[30] Among such tests are the following: He shall be of good character, and shall understand the duties and obligations of citizenship under a republican form of government (R.S. 18:31 (2)); unless he is illiterate (in which case he must meet other standards (*viz.* R.S. 18:36)), he shall be able to read and write, and shall demonstrate his ability to do so by making under oath written application entirely written, dated, and signed by him without assistance or suggestions from any source (R.S. 18:31 (3)), and the application form includes questions such as "I am now ____ years, ____ months, and ____ days of age. * * * My color is ____." (R.S. 18:32); he shall be able to read "any clause in the Constitution of Louisiana or of the United States and give a reasonable interpretation thereof." (R.S. 18:35.)

only to respond to challenges under these conditions violates the Fourteenth as well as the Fifteenth Amendment, regardless of the deficiencies which might exist in their registration cards; and, as was said in *Reddix* v. *Lucky*, 252 F. 2d 930, 938 (C.A. 5):

> If the plaintiff has been illegally removed from the voters' list his remedy lies in having the illegal action rescinded, not in re-registering.

In *Thornton* v. *Martin* (M.D. Ga.), 1 Race Relations Law Reporter 213, 22 Negroes brought a class action for damages and for an injunction against the registrars of Randolph County, Georgia, alleging that the names of the plaintiffs and some 175 other Negroes similarly situated had been illegally removed from the list of voters solely because of their race. In granting the injunction, the court stated (*id.* at 216):

> This court has jurisdiction to issue an appropriate injunction in this case, the effect of which will be, in general, to enjoin the three defendant Registrars and their successors in office from longer permitting the names of the Negro citizens of Randolph County, Georgia, whose names were on the list of registered voters in Randolph County for 1952 to remain off of the present voters list in said county; and from in any manner, or to any extent, discriminating against any Negro citizen of said County, (regardless of whether or not his or her name was on said voters list), in reference to the matter of suffrage because of their race or color, * * *

Deficiencies of the type for which Negroes have here been removed from the registration rolls are not

treated by the State of Louisiana as being bases of disqualification. This is demonstrated by the fact that thousands of white people whose registration cards have the same deficiencies as the Negroes' in this case are on the rolls today. The individual defendants have not challenged these white registrants. Nor has the Registrar exercised his independent powers to challenge them. See La. R.S. 18:244 (1950). The assertion that the Negroes are not qualified, as the findings of the District Court show, is but a pretext and the "profession of high purpose was a fraud designed to deny Negro citizens of a right to vote." (Pet. 11a.)

Nor would it be reasonable to suggest that, in lieu of restoration to the voting rolls, those Negroes who were left on the rolls (registered voters may challenge, R.S. 18:245) or the Registrar may challenge *en bloc* the white voters whose records contain technical deficiencies for which the Negroes were massively disfranchised. The Constitution does not sanction or require such retributive injustice. As this Court said in *Shelley* v. *Kraemer*, 334 U.S. 1, 22:

> It is, therefore, no answer to these petitioners to say that the courts may also be induced to deny white persons rights of ownership and occupancy on grounds of race or color. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities.

See also, *Henderson* v. *United States*, 339 U.S. 816, 825–826.

The Fifteenth Amendment and 42 U.S.C. 1971 (a)(c) are corrective, not penal. They do not permit challenging of whites by Negroes for racial rea-

sons any more than they would permit a "black primary" as an antidote to a "white primary."

In short, reinstatement upon the registration rolls of the Negro voters illegally challenged in this case was, for the reasons we have given, within the authority and discretion of the District Court. Its order merely preserved the *status quo* existing prior to the filing of the illegal challenges and mailing of the citations to appear.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the application to vacate the stay order of the Court of Appeals should be granted,[31] that the petition for a writ of certiorari before judgment should be granted, and that the judgment of the District Court should be affirmed.

J. LEE RANKIN,
Solicitor General.
JOSEPH M. F. RYAN, JR.,
Acting Assistant Attorney General.
HENRY PUTZEL, JR.,
DAVID L. NORMAN,
J. HAROLD FLANNERY, JR.,
Attorneys.

FEBRUARY 1960.

[31] As indicated in our motion to vacate the stay order issued by the Court of Appeals, a general election will be held in Louisiana on April 19, 1960. In the event the case is not decided by this Court by that time, we believe the equities are such that the stay should be vacated in order that the Negro citizens illegally purged from the voting rolls may be restored thereto so that they may participate in that election. Unless the *status quo* existing prior to the purge is restored prior to that time, the very valuable voting rights of the persons aggrieved will have been lost *pro tanto*.

APPENDIX A

1. Samples of Registration Cards and Affidavits of Challenge

The registration cards of two school teachers; affidavit of challenge

[See p. 42a, *infra*]

(A) is the registration card of Mrs. Ethel A. Smith, a Negro woman, who was challenged by two of the individual defendants for miscomputation of her age. Her age was incorrectly figured (by one day) only if the date on which the registration card was executed is to be counted. The challenging form (A–1) is also shown. (B) is the registration card of Mrs. William A. Lewis, a white woman, who, though from the same ward, was not challenged. On her card appears the misspelling "Louisiania."

The registration cards of two other registrants; affidavit of challenge

[See p. 42b, *infra*]

(AA) is the registration card of James D. Cyrus, a Negro, who was challenged by two of the individual defendants for misspelling the county of his birth. The challenging form (AA–1) is also shown and reveals that the challengers spelled the word "misspelling" incorrectly. (BB) is the registration card of Herman K. Manning, Jr., a white man, who, though from the same ward, was not challenged. On his card appear the misspelling of his name and the misdesignation of his sex.

Date Registered

June 4, 1927

Form LR-1

FORM OF APPLICATION FOR REGISTRATION

OFFICE OF REGISTRAR OF VOTERS

Parish of Washington, State of Louisiana

Ward No. 4

Prct. No. 2

Cert. No. 346

RESIDENCE No. 920 E. 7th St.

I am a citizen of the United States and of the State of Louisiana.

My name is Mr.-Mrs.-Miss Ethel A. Smith (Please Print) I was born in the

State (or country) of Mississippi Parish (or county) of Covington

on the 24 day of Sept. in the year 1887 I am now 69 years, 8

months and 10 days of age. I have resided in the State since 1913

in this Parish, since 1913 and in Precinct No. 2 in Ward No. 4

of this Parish continuously since 1955. I am not disfranchised by any provisions of the Constitution

of this State. The name of the householder at my present address is Mrs Ethel A. Smith

My occupation is teaching My color is Negro My sex is Female

I am not now registered as a voter in any other Ward or Precinct of this State, except None

My last registration was in Ward 4 Precinct 12 Parish Washington

I am now affiliated with the Democratic Party.

Signature Miss Ethel A. Smith

Sworn to and subscribed before me Curtis M. Thomas

(Deputy) Registrar

(A)

Date Registered

MAY 22 1958 195

Form LR-1

FORM OF APPLICATION FOR REGISTRATION

OFFICE OF REGISTRAR OF VOTERS

Parish of Washington, State of Louisiana

Ward No. 4

Prct. No. 7

Cert. No.

RESIDENCE No. 1632 Ave G

I am a citizen of the United States and of the State of Louisiana.

My name is Mr.-Mrs.-Miss Mrs Wm. A. Lewis (Please Print) I was born in th

State (or country) of Louisiana Parish (or county) of WASH.

on the 12 day of Nov. in the year 1914 I am now 43 years, 6

months and 10 days of age. I have resided in the State since 1914

in this Parish since 1914 and in Precinct No. , in Ward No.

of this Parish continuously since 1914. I am not disfranchised by any provisions of the Constitutio

of this State. The name of the householder at my present address is 1632 Ave G

My occupation is Teacher My color is White My sex is Fema

I am not now registered as a voter in any other Ward or Precinct of this State, except x x x

My last registration was in Ward 4 Precinct 7 Parish Wash

I am now affiliated with the Democratic Party.

Signature Mrs Wm A Lewis

Sworn to and subscribed before me Curtis M. Thomas

(Deputy) Registrar

(B)

539882 O - 60 (Face p. 42) No. 1

Form LR-17

AFFIDAVIT IN CASE REGISTRATION OF VOTER IS CHALLENGED

STATE OF LOUISIANA—PARISH OF Washington

PERSONALLY CAME AND APPEARED BEFORE ME Curtis M. Hance
(DEPUTY) REGISTRAR OF VOTERS IN AND FOR THE PARISH OF Washington
STATE OF LOUISIANA
E. P. Jr. Edwards AND Eugene Farmer
WHO BEING DULY SWORN, DO DEPOSE AND SAY:
THAT THEY ARE BONA FIDE REGISTERED VOTERS OF THIS PARISH; THAT AFTER REASONABLE INVESTIGATION BY THEM AND EACH OF THEM, AND ON INFORMATION AND BELIEF, THAT Ethel A. Smith,
REGISTERED FROM 920 E. 7th St.
(Municipal number and street, if any)
TO WHOM WAS ISSUED REGISTRATION CERTIFICATE NO. WARD 4
PRECINCT ✓, OF THIS PARISH, IS ILLEGALLY REGISTERED OR HAS LOST HIS OR HER RIGHT TO VOTE IN THE PRECINCT, WARD OR PARISH IN WHICH THEY ARE REGISTERED, FOR THE FOLLOWING REASONS:
Age not Computed Qualification

AND SHOULD BE ERASED FROM THE OFFICIAL PRECINCT REGISTER OF WARD 4
PRECINCT, ✓ THAT THIS AFFIDAVIT IS MADE FOR THE PURPOSE OF CAUSING SAID NAME TO BE ERASED.

SWORN TO AND SUBSCRIBED BEFORE ME, ON THIS 12th DAY OF May, 1959

E. P. Jr. Edwards

Eugene Farmer

Curtis M. Hance
(Deputy) Registrar of Voters

Date Registered

Form 104

FORM OF APPLICATION FOR REGISTRATION

OFFICE OF REGISTRAR OF VOTERS

Parish of Washington, State of Louisiana

5/14 1947

Ward No. 4

Prct. No. 2

Cert. No. 174

RESIDENCE No. 506 Ave. C

I am a citizen of the United States and of the State of Louisiana.

My name is (Give full name) JAMES D. CYKES I was born in the

State (or country) of Miss. Parish (or county) of PEARL RIVER

on the [illegible] day of Feb. in the year 1930 I am now 26 years 7

months and 12 days of age. I have resided in the State since 1933

in this Parish since 1933 and in Precinct No. 2 in Ward No. 4

of this Parish continuously since 1933. I am not disqualified by any provision of the Constitution

of this State. The name of the husband of my present citizen is JAMES D. CYKES

My occupation is INSURANCE My color is Negro My age is 20 16

I am not now registered as a voter in any other Ward or Precinct of this State, except None

My last registration was in Ward 4 Precinct 2 Parish WASHINGTON

I am now affiliated with the DEMOCRATIC Party.

Signature James D. Cykes

Sworn to and subscribed before me [illegible]

(Deputy) Registrar

Date Registered

Form 104

FORM OF APPLICATION FOR REGISTRATION

OFFICE OF REGISTRAR OF VOTERS

Parish of Washington, State of Louisiana

5/20 1947

Ward No. 4

Prct. No. 4

Cert. No. [illegible]

RESIDENCE No. 301 Peterson

I am a citizen of the United States and of the State of Louisiana.

My name is (Give full name) HERMAN LING JR I was born in the

State (or country) of La. Parish (or county) of Wash.

on the 3 day of April in the year 1924 I am now 23 years 1

months and 13 days of age. I have resided in the State since Birth

in this Parish since Birth and in Precinct No. 4 in Ward No. 4

of this Parish continuously since Birth. I am not disqualified by any provision of the Constitution

of this State. The name of the husband of my present citizen is SELF

My occupation is paper mill My color is W My age is F

I am not now registered as a voter in any other Ward or Precinct of this State, except [illegible]

My last registration was in Ward 4 Precinct 4 Parish Wash.

I am now affiliated with the Dem. Party.

Signature Herman Ling Jr

Sworn to and subscribed before me Curtis M. Thomas

(Deputy) Registrar

Form LR-17

AFFIDAVIT IN CASE REGISTRATION OF VOTER IS CHALLENGED

STATE OF LOUISIANA—PARISH OF Washington

PERSONALLY CAME AND APPEARED BEFORE ME Franklin K. Thomas (DEPUTY) REGISTRAR OF VOTERS IN AND FOR THE PARISH OF Washington STATE OF LOUISIANA.

Ea. R. Mc. Elveen AND Eugene Faucette

WHO BEING DULY SWORN, DO DEPOSE AND SAY:

THAT THEY ARE BONA FIDE REGISTERED VOTERS OF THIS PARISH, THAT AFTER REASONABLE INVESTIGATION BY THEM, AND EACH OF THEM, AND ON INFORMATION AND BELIEF, THAT Josalia R. Cyrus

REGISTERED FROM 546 Ash St. Up
(Municipal number and street, if any)

TO WHOM WAS ISSUED REGISTRATION CERTIFICATE NO. WARD 4

PRECINCT 2, OF THIS PARISH, IS ILLEGALLY REGISTERED OR HAS LOST HIS OR HER RIGHT TO VOTE IN THE PRECINCT, WARD OR PARISH IN WHICH THEY ARE REGISTERED, FOR THE FOLLOWING REASONS:

Misspelling on application

AND SHOULD BE ERASED FROM THE OFFICIAL PRECINCT REGISTER OF WARD 4 PRECINCT, 2 THAT THIS AFFIDAVIT IS MADE FOR THE PURPOSE OF CAUSING SAID NAME TO BE ERASED.

SWORN TO AND SUBSCRIBED Eugene Faucette

BEFORE ME, ON THIS 13 E. R. Mc Elveen

DAY OF April, 1967

Franklin K Thomas
(Deputy) Registrar of Voters

2. Analysis of Random Sampling of Registration Cards of White Registrants Not Challenged in Washington Parish, Louisiana

The information tabulated below is derived from an analysis of the 198 registration cards of white persons not challenged. These cards were selected at random from the registration records of Washington Parish, and are part of the record in this case. By stipulation (R. ——), counsel for the parties have agreed that the registration records would not appear as part of the printed record but may be referred to in the briefs and in oral argument. The categories used in the tabulation are those which the individual defendants used to challenge the cards of the Negro citizens, as appears from analysis of a representative number of affidavits of challenge.

Although several of the challenges to Negro voters were based on illegibility, illiteracy, failure to sign card properly, and execution by more than one party, such deficiencies in white persons' registration cards have been ignored in this analysis because of the subjective nature of the judgment involved. As a result, this analysis reflects less exacting standards as applied to the cards of white persons than those used by the individual defendants to challenge Negroes. Nevertheless, sixty-eight per cent of the white persons' cards contain challengeable errors.

Moreover, although several affidavits of challenge filed by the individual defendants themselves contain misspelled words, *e.g.*, "illetirate," "promi cious misspelling," "illegibley," no attempt has been made to detail such errors.

In the summary below the "combinations of errors" category does not include any cards listed in any of the separate specific error categories. The column relating to "other" errors is composed of combina-

tions of errors apart from those which appeared most frequently and which are specifically listed under the heading, "Combinations of Errors."

White voters not challenged, though their registration cards had errors, as indicated, for which Negroes were challenged

Failure to Compute or Mis-computation of age	Misspelling	Incomplete or Erroneous Entry	Combinations of Errors			
			Age and Spelling	Age and Incomplete or Erroneous Entry	Spelling and Incomplete or Erroneous Entry	Other
79	7	13	16	16	1	3

APPENDIX B

EXCERPT FROM CONGRESSIONAL RECORD FOR AUGUST 1, 1957, DEALING WITH PRACTICE OF PURGING NEGRO VOTERS IN LOUISIANA [1]

Mr. DOUGLAS subsequently said: Mr. President, I ask unanimous consent that a letter from Warren Olney, Assistant Attorney General, which a member of the Senate Committee on the Judiciary, at my request, obtained from him, be inserted in the RECORD at the conclusion of my remarks and prior to the final vote.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY,
United States Senate
Washington, D.C.

DEAR SENATOR: In your letter of July 29, 1957, addressed to the Attorney General, you ask to be furnished the facts that prompted the Department of Justice to present to a United States grand jury certain complaints alleging violation of the constitutional rights of registered voters in five parishes of Louisiana.

These complaints, at the request of the Department of Justice, were investigated by the Federal Bureau of Investigation. As related in my letter to the Honorable EMANUEL CELLER, chairman, Subcommittee No.

[1] 103 Cong. Rec. 13334–13336.

5, of the Committee on the Judiciary, House of Representatives, dated February 21, 1957, the evidence relating to the complaints arising from Caldwell, De Soto, and Grant Parishes was presented to the grand jury sitting in Monroe, La., during the period from January 4, 1956, to February 6, 1957. The evidence relating to the complaints arising from Bienville, Jackson, and Ouachita Parishes was outlined to the grand jury on February 12, 1957. Information relating to the Ouachita Parish complaints has previously been supplied in a statement to the Senate Subcommittee on Privileges and Elections. That statement appeared on pages 237 through 240 of the printed hearings before the Subcommittee on Constitutional rights. The evidence developed by the Federal Bureau of Investigation with respect to the other five parishes, and upon which the presentation to the grand jury was predicated, may be outlined substantially as follows:

BIENVILLE PARISH

In September of 1956 a group of men associated with local citizens councils visited the office of the registrar of voters in Bienville Parish. There were at this time 5,284 white persons and 595 Negroes registered to vote in the parish. The men filed with the registrar purported affidavits challenging the legality of the registration of 560 of the 595 registered Negro voters and challenging the registration of 45 of the more than 5,000 registered white voters. The challenges were purportedly based upon errors which the registrants had made in filling out their registration cards. One of the blanks that applicants for registration were required to fill out was after the item: "My color is ————." Where an applicant used the word "Negro" or "colored" in this blank,

the registration was challenged as irregular. The reason claimed was that an actual color, such as brown, blue, red, or green, would be the only appropriate response. Accordingly, a registrant who has responded with the word "white" would be properly registered but one responding with the word "Negro" or "colored" would not. Other spaces on the card required the registrant to state both his date of birth and his exact age in years, months, and days. An error in this computation by as much as 1 day would be used as a basis for challenge and this despite a ruling by the attorney general of Louisiana that such an error did not render a registration invalid, provided it appeared that the registrant was of legal voting age. On the basis of the challenging affidavits, notices were sent to the challenged voters requiring them to appear within 10 days to prove their qualifications as required by law. When the challenged voters appeared at the office of the registrar, they were told that they could not use as witnesses on their behalf registered voters who had, themselves, been challenged. Such requirement does not appear in the law of Louisiana and the State attorney general has in fact ruled that challenged voters may witness on behalf of other challenged voters. Challenged voters who sought to file affidavits in support of their qualifications were advised that the affidavits must not merely state in general terms that they were qualified, that they possessed the residence requirements, and were legally registered, but would have to include a statement that there were no errors on their original application for registration. Applying the tests used in making the challenges, such an answering affidavit was, of course, impossible. Among the registered Negro voters who were challenged and removed from the rolls were school teachers and other

professional persons of the Negro race. It is interesting to note that with regard to two of the white voters who had been challenged but who objected on the grounds that they would lose their jobs if removed from the voting rolls, the challenges were withdrawn. With this exception, all of the challenged voters failed or were unable to meet the challenge to the satisfaction of the registrar and their names were removed from the roll of voters.

CALDWELL PARISH

Prior to June 1956 there were approximately 3,800 registered white voters and 450 registered Negro voters in Caldwell Parish. In May 1956 two men went to the office of the registrar of voters to examine the registration cards that were there on file. One of these men had recently been an unsuccessful candidate for the State legislature in a Democratic primary. He had stated he felt he lost the election because Negroes had voted against him. The 2 men were permitted by the registrar to file affidavits challenging the registration of 68 of the 89 Negro voters registered for 1 particular precinct. None of these affidavits were verified as required by Louisiana law. The registrar never published the list of the challenged voters in a local newspaper as required by Louisiana law. Notices of the challenges were sent to the challenged voters on June 2 and June 4. On June 12 a city election was held for the precinct in which the challenged voters resided. Although Louisiana law and the statement on the notices themselves allowed 10 days in which to respond to the challenge, and although the 10 days had not elapsed at the time of the election, none of the challenged Negro voters were permitted to vote. Although the registrar certified their names on the list of voters for the city elec-

tion, the clerk refused to give them a ballot when they appeared at the polls. No white voters were challenged nor were [any] prevented from voting. After the election the registrar, when interviewed, admitted that there were irregularities in the challenging of the Negro voters and that he intended to restore their names on the rolls. He did not, however, do so.

In September of 1956 the registrar of voters was summoned to appear before a joint meeting of the parish police jury and the local citizens council. At this meeting he was admonished regarding his manner of running the office of registrar. Shortly thereafter, the registrar, without any challenging affidavits having been filed, sent out citations challenging the qualifications of 266 registered Negro voters in the parish and 12 white voters. The Negro voters were challenged on the basis of supposed errors in their application cards, which cards had originally been accepted by this same registrar. The 12 white voters were challenged because of change of residence. White voters whose cards contained "errors" similar to those appearing on the cards of the challenged Negro voters, were not challenged by the registrar. Negroes who responded to the citations in an effort to prove their qualifications were advised that they would have to have as witnesses three registered Negro voters from the same precinct as the challenged Negro voters and that they would have to be accompanied by a local law enforcement officer to identify them. Challenged voters were unable to obtain a law enforcement officer who would agree to accompany them to the registrar's office for this purpose. One challenged Negro voter who was accompanied by three registered white voters to act as witnesses was told that these witnesses were not acceptable because they were not of the same race as the challenged voter.

None of the challenged Negro voters were successful in meeting the challenge. By the time of the general election in November 1956, only two of them had succeeded in reregistering.

DE SOTO PARISH

At the beginning of October 1956 there were 6,450 registered white voters in De Soto Parish, and 770 registered Negroes. In early October a group of men associated with the Citizens Council of De Soto Parish visited the office of registrar to examine the applications for voter registration which were there on file. These men drew up and filed with the registrar purported affidavits challenging the legality of the registration of 383 Negro voters, and of 4 white voters. The challenges claimed errors on the application cards. Such errors included miscomputation of the age of the applicant in years, months, and days; the misspelling of words, and the use of the word Negro as a designation for the applicant's color. The purported affidavits were not sworn to before the registrar, as required by Louisiana law. On the basis of the affidavits the registrar sent notices to the challenged voters requiring them to appear in his office within 10 days to prove their qualifications as voters in the manner provided by Louisiana law. The statutes of Louisiana set forth a form of affidavit to be used in answer to a challenge. These forms were printed up and supplied upon request to registrars of voters in the parishes. When challenged voters appeared in response to the challenge they were told by the registrar that they would have to file an affidavit stating that there were no errors in their original application cards and that they would have to see a private attorney to have such affidavit drawn up. In no case did he provide a challenged voter with the

form of affidavit supplied by the State. Challenged voters of the Negro race who consulted attorneys in the locality were unable to engage their services. One of the challenged Negro voters did file with the registrar an affidavit in response to the challenge, which affidavit was substantially in the form required by Louisiana law. This affidavit had been signed by four white voters who were registered in the parish. Immediately after this affidavit was left with the registrar the president of the Citizens Council of De Soto Parish contacted the signers of the affidavit and two of them thereafter filed another affidavit withdrawing the affidavit which they had executed on behalf of the challenged Negro voter. One challenged white voter filed, in answer to the challenge, an affidavit substantially in the same form as that which the challenged Negro voter had filed. This affidavit was accepted by the registrar and the challenged white voters' name was retained on the voting rolls. All of the other challenged voters were unable to meet the challenge and their names were stricken from the roll of registered voters.

GRANT PARISH

At a meeting of the citizens council of Grant Parish on October 4, 1956, a resolution was adopted in favor of purging the vote registration rolls of the parish of unqualified voters. A committee was appointed for this purpose. On October 8 and 9 the members of the committee examined voter registration cards in the office of the registrar. They examined only the cards of Negro voters. On the basis of errors found in the cards, the citizens council members filed affidavits challenging the qualifications of 758 of the 768 registered Negro voters. No white voters were challenged. Most of the errors upon which the challenges were based related to the filling out of the line in the regis-

tration cards reading, "I am not now registered as a voter in any other ward or precinct of this State except ———." Failure to fill in the blank or the filling in of it by anything other than the single word "none" was taken as an error. Other claimed errors included the use of the initial "C" to indicate the registrant's color. On the basis of the challenging affidavits the registrar mailed citations of challenge to the challenged voters, allowing 10 days in which to respond to the challenge. In this instance the registrar acted with complete fairness and, in accordance with the law of Louisiana, all challenged registrants who appeared at the registrar's office with three registered voters to vouch for their qualifications were retained by the registrar on the roll of the registered voters. Thus, 489 of the 758 challenged voters were able to meet their challenge. Facts relating to this case appeared on the front page of the Colfax Chronicle of Friday, October 12, 1956, a copy of which is attached hereto.

JACKSON PARISH

In October of last year a group of men called at the office of the registrar of voters of Jackson Parish to examine the application cards of registered voters. Shortly thereafter 2 of the men filed purported affidavits challenging the qualifications of 953 of the 1,122 Negro voters registered in the parish. They also filed affidavits challenging the qualifications of 13 of the 5,450 white voters registered in the parish. The affidavits were filed on the basis of supposed errors in the application card of each registrant. The same types of supposed errors were, on examination, found on the registration cards of white voters who were not challenged. On the basis of the affidavits, notices were sent to the challenged voters, allowing them 10 days in which to respond to the challenge.

Many of the challenged Negro voters appeared in the office of the registrar in response to the challenges. Many of them appeared with witnesses who offered to execute the precise form of affidavit that the Louisiana law provided should be executed in response to a challenge. The registrar refused to accept such affidavit, even though the attorney general of Louisiana has ruled that the execution of such form is sufficient to meet the challenge and entitles the challenged voter to have his name retained on the voting rolls. The registrar advised challenged voters that the answering affidavits would have to swear that there were no mistakes on the original application card. Reply affidavits on behalf of 2 of the 13 challenged white voters were, however, accepted. Affidavits of two Negro voters who had physical disabilities and therefore had not themselves filled out the original application card were also accepted. All others of 953 challenged Negro voters were unable to meet the challenge under the requirements laid down by the registrar. Their names were accordingly dropped from the roll of registered voters.

The United States grand jury sitting in Monroe, La., failed to return any indictments in connection with the cases that I have here reviewed. With regard to the Bienville and Jackson Parish cases, the grand jury, after the evidence developed by the Federal Bureau of Investigation had been outlined to it, expressed itself as not wishing to have any of the witnesses called as there was no real possibility of any indictments being returned.

Sincerely,

WARREN OLNEY III,
Assistant Attorney General.

[From the Colfax (La.) Chronicle of October 12, 1956]

GRANT COLORED VOTERS PURGED FROM ROLLS—MEMBERS OF CITIZENS COUNCIL TAKE ACTION THIS WEEK

Members of the White Citizens Council of Grant Parish worked in the registrar's office this week in a frank attempt to disfranchise the parish's 750–800 Negro voters on the basis of color alone before the November 6 election.

Louis Earle Stevens, secretary of the council, estimates that at least 90 percent of the colored registrations were challenged on the basis of being incorrect or incomplete. Mrs. Horace Mosley, registrar, is sending the challenged registrants duplicate copies of the affidavits and citations requiring them to appear in person in 10 days to prove their right to remain on the rolls.

The action taken in "purging the rolls" followed a Citizens' Council meeting in Dry Prong at which Senator William Rainach of Homer; Representative John S. Garrett of Haynesville, State segregation leaders, and Raymond Masling, executive director of the Association of Citizens Councils of Lonisiana, were present. (Fifty-two persons were present at the meeting held last Thursday, Stevens says.)

According to W. J. B. Jones of Colfax, council president, the group voted unanimously to undertake to clear colored voters from the poll lists.

THEY WERE UNANIMOUS

The decision, if any, was supposed to be taken at a board meeting, Jones says, but when the board meeting was called, following the regular meeting, Rainach urged others attending the meeting to remain.

"They wanted to cut the vote," Jones told the Chronicle, "and the board and the congregation voted unanimously to have it done." Members of the board

at the meeting were Paul Haigler, ward 1, vice president; Ray Fuller and O. J. Lemoine, ward 6; H. B. Garlington, ward 3; J. F. and Cecil Cryer, ward 2; Johnny Kircher, ward 4; Aaron Capps, ward 5.

Stevens says that ward eight was represented by some members, although not by any board member; and that ward seven was the only ward not represented.

COMMITTEE APPOINTED

Pursuant to the vote to cut the rolls, Jones appointed the following committee to attend to the matter: Garlington, chairman; Stevens, Lemoine and Fuller; and Herschel Nugent, Jack Cameron and Virgil McNeely of ward one.

Stevens stresses, however, that the challenges were made by individuals, not by the council. (Most of the challenges being made out in the registrar's office are to be signed by Nugent and Lemoine; others are to be signed by Fuller and Lowe, Mrs. Mosley says.)

CHECKED ONLY COLORED

Monday afternoon and evening the committee members, assisted at various times by Masling, Jones, Frank Stewart of Aloha and Lanny Fletcher, a member of the Dry Prong school faculty, went through the registration cards, checking only those filled out by colored registrants.

In accordance with advice they had been given by the State segregation leaders, they principally relied on three points on the card.

INCORRECT, INCOMPLETE

One statement on the card reads "I am not now registered as a voter in any other ward or precinct of this State except ———." Told that the correct word to put in the blank is "None" the challengers

pulled all cards where the blank was filled in with any other word (such as "Grant," which occurs most often) and certified them as incorrect. Where the blank was left blank, that application was certified as incomplete.

SOME WERE JUST "C"

Where, instead of writing out colored in the indicated space, the applicant simply put "C", the application was certified as incorrect.

If the application was all right up to here, the person's age in years, days, and months (which must be shown) was refigured and often found off by a day or so. (Other points were also checked in some instances.)

ONLY VICTOR ADAMS

In a check made by the Chronicle on Tuesday of the first 100 white registrants in ward one, only one card was found which would pass the above tests — that of Victor Adams. Ninety-five had the incorrect answer, or none, in the blank first referred to. Four (including School Superintendent C. C. Belgard) figured their ages incorrectly.

In a further check made by the Chronicle, not one member of the Citizens Council committee had a card which would pass the tests. Virgil McNeely stated that his color is "w," as did Nugent, Garlington, and Stevens. The others misfigured their ages or gave the wrong answer, or none, to the question about being registered in any other ward.

Lemoine, according to several acquaintances, lives in Colfax in ward 1 but votes in ward 6.

COUNCIL OFFICERS IN DOUBT ON MOVE

"This is the third or fourth time they have pushed us about not doing something about checking illegal.

registration," W. J. B. Jones, president of the Citizens Council of Grant Parish, told the Chronicle this week.

"I've always managed to keep them off before. I thought the right way to do it was to wait until the first of the year, when everyone has to register, and I fought vigorously to do it that way." That way we could have the law complied with by everyone. But they voted unanimously to do it now and I could make no objection."

COULDN'T FIND OUT

Jones said he had been unable to find out why they were so anxious to clear the rolls before the November election. "In fact," he said, "I was on my feet talking about some of the amendments, some of which I think we ought to support, when Rainach took the floor away from me."

(EDITOR'S NOTE.—While nobody seems to be able to give an official answer as to why the rolls should be cleared before the November election, there is a general agreement that both State and National politics are involved. Opposition to Earl Long, opposition to the amendments he is sponsoring and opposition to Adlai Stevenson are all seen as forming at least part of the motive.)

HAIGLER DISAPPROVING

Council Vice President Paul Haigler asked the Chronicle to make it very clear that he had refused to be appointed on the purge committee; that he wanted nothing to do with it; and that he didn't approve of the method used.

Council Secretary Louis Earle Stevens noted that "Some cards were pulled that shouldn't have been—including some that had been filled out by the regis-

trar." To wait for a new registration would have been "basically the best way," he said.

"I think some other organization, somebody that could have afforded to check both white and colored, should have done it," Stevens added. He said he did not know the reason for the hurry.